THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18604 OF 1997

19.07.2006

Between:

Syed Mughthar Hussain, S/o.S.Zuhoonul Hussain Abidi (Late)

… Petitioner

AND

The General Manager,
Nalgonda District Cooperative Central Bank Ltd., Nalgonda
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18064 OF 1997

ORDER:

The petitioner filed the instant writ petition seeking a writ of Mandamus directing the Nalgonda District Cooperative Central Bank (DCCB, for brevity) to promote the petitioner to the category of Assistant Manager/Accountant/Executive Officer with effect from 01.7.1983 and a further direction to place the petitioner over and above the second respondent in the seniority by declaring the action of DCCB in promoting the second respondent prior to the petitioner as illegal and arbitrary. The petitioner was appointed as Lower Division Clerk (LDC) on 03.2.1968 in DCCB. The second respondent was appointed on 12.8.1968 in the same category. Subsequently, it is alleged that ignoring the claim of the petitioner, the petitioner was promoted as Assistant Manager/Accountant on 01.7.1983 based on the seniority list of LDCs where the second respondent was shown as senior. The petitioner therefore made a representation on 09.7.1983. The same was not considered. In the category of accountants, seniority list was prepared and published on 31.10.1991 showing the petitioner as junior. The petitioner allegedly raised objections and they were not considered. In the meanwhile another provisional seniority list was prepared and objections were invited, without considering the representations made by the petitioner. Therefore, the present writ petition is filed.

DCCB filed counter affidavit opposing the writ petition. It is stated that the second respondent was appointed as Supervisor in Bhongir Cooperative Central Bank on 07.8.1968 whereas the petitioner was appointed as LDC on 03.2.1968 and after one year started working as Supervisor from 14.6.1969 in which post he was confirmed on 14.6.1970. Therefore, the second respondent who was confirmed as Supervisor on 07.8.1968 was shown at serial No.11 and the petitioner who was confirmed as Supervisor on 14.6.1969 was shown at serial No.18 in the seniority list published on 15.1.1973. The allegation that the petitioner filed objections to the seniority list was denied. It is further stated that after merger of Primary Agricultural Developmental Bank, Bhongir with DCCB, a draft seniority list was

published calling for objections and while preparing the draft seniority list merged seniority and *inter se* seniority of employees of merged entities were taken into consideration as per the procedure prescribed under Rule 73 of A.P. Cooperative Society Rules, 1973 (the Rules, for brevity). Therefore, there is no illegality in the action complained.

The second respondent also filed counter affidavit opposing the writ petition. An objection is also raised as to the maintainability of the writ petition. It is further stated that if an employee of the cooperative society has any grievance regarding the seniority list, such employee has to file an appeal under Rule 73 (ix) of the Rules and, therefore, the writ petition is not maintainable.

The background of the case requires consideration of the question of maintainability of the writ petition against Nalgonda District Cooperative Central Bank in the matter of seniority of employees.

A Full Bench of this Court in **Sri Konaseema Co-op. Central Bank Ltd. v N.Seetharama Raju**[1] considered the question whether a writ petition lies against a cooperative society and if it does in what circumstances. After a detailed consideration, the Full Bench summed up the propositions as under.

> (i) If a particular cooperative society can be characterized as a 'State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an 'authority' within the meaning, and for the purpose, of Art.226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a 'State', has to act in conformity with Art.14 and, for that reason, it will be made to follow the bye-laws.
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> (ii) Even if a Society cannot be characterized as a 'State' within the meaning of Art.12, even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the Society. In such a case, it is unnecessary to go into the question whether the Society is being treated as a 'person' or an 'authority', within the meaning of Art.226 of the Constitution. What is material is the nature of

the statutory duty placed upon it, and the Court will enforce such statutory public duty.

(iii) **The bye-laws made by a cooperative society registered under the A.P. Cooperative Societies Act do not have the force of law.** They are in the nature of contract, terms of contract, between the Society and its employees, or between the Society and its members, as the case may be. **Hence, where a Society cannot be characterized as a 'State', the service conditions of its employees, governed by bye-laws, cannot be enforced through a writ petition**. However, in the matter of termination of service of the employees of a cooperative society, S.47 of the A.P. Shops and Establishments Act provides a certain protection, and since the said protection is based upon public policy, it will be enforced, in an appropriate case, by this Court under Art.226 of the Constitution. Ordinarily, of course, an employee has to follow the remedies provided by the A.P. Shops and Establishments Act; but, in an appropriate case, this Court will interfere under Art.226, if the violation of a statutory public duty is established. It is immaterial which Act or Rule casts such a statutory public duty.

(iv) **Mandamus, certiorari, and prohibition are public law remedies. They are not available to enforce private law rights**. Every act of a society which may be a 'State' within the meaning of Art.12 does not necessarily belong to public law field. A society, which is a 'State', may have its private law rights just like a Government. A contractual obligation, which is not statutory, cannot be enforced by way of a writ petition under Art.226 of the Constitution. Prior to entering into contract, however, Art.14 operates, as explained by the Supreme Court in **E.E. & C. Ltd., v State of West Bengal**[2] and **Ramana Dayaram Shetty**[3].

In **U.P.State Coop. Land Development Bank Ltd., v Chandra Bhan Dubey**[4] (supra), the employees of U.P.State Cooperative Land Development Society questioned their dismissal orders before the High Court, which overruled the objection of the Bank that the writ petition would not lie as it is not an authority and instrument of the State. In appeal, the Supreme Court *inter alia* considered the maintainability of writ petition against a cooperative society registered

under a State enactment. On consideration of the relevant law, the Supreme Court held that unless and until there is violation of statutory provision by the cooperative society resulting in deprivation of statutory protection to the employees, writ petition would not lie. The relevant observations made by the Supreme Court are as under.

> When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226.

In a recent judgment in **Supriyo Basu v W.B.Housing Board**[5], the Supreme Court relied on **Chandra Bhan Dubey** (supra) and reiterated the principles observing as under.

> It is undisputed that the respondent Society is a cooperative society constituted on agreement between members thereof who had agreed to abide by the provisions of the West Bengal Cooperative Societies Act, 1983, the Rules framed thereunder or the bye-laws framed by the Society. The Society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. Only if it is established that a mandatory provision of a statute has been violated, could a writ petition be maintainable. Before a party can complain of an infringement of his fundamental right to hold property, he must establish that he has title to that property and if his title itself is in dispute and is the subject-matter of adjudication in

> proceedings legally constituted, he cannot put forward any claim based on the title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether the rights in or to that property have been improperly or illegally infringed could arise. The dispute as noted by the High Court essentially related to the claims of two rival groups of private individuals in relation to common car parking spaces. The learned Single Judge gave certain directions, which even touched upon the legality of the sale deeds.

Therefore, a writ petition in the matter of seniority of two employees of DCCB would not lie. In the two decisions cited by the learned Counsel for the petitioner in **Pradeep Kumar Biswas v Indian Institute of Chemical Biology**[6] and **Zee Telefilms Ltd v Union of India**[7] the point which falls for consideration in this case is not specifically dealt with. As the point, in this case, is directly covered by the Full Bench Judgment of this Court as well as the decision of the Supreme Court, this Court holds that the writ petition is not maintainable. It shall be open to the petitioner to prefer an appeal before the Managing Committee under Rule 73(ix) of the Rules. As and when such appeal is filed, the same may be considered by the Managing Committee.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

July 19, 2006
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[1] AIR 1990 AP 171 (FB)

[2] AIR 1975 SC 266

[3] AIR 1979 SC 1628

[4] AIR 1999 SC 753

[5] (2005) 6 SCC 289

[6] (2002) 5 SCC 111

[7] (2005) 4 SCC 649